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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,312	07/07/2003	William A. Czajkoski		4251

7590 05/02/2005
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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 05/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/613,312

Applicant(s)

CZAJKOSKI, WILLIAM A.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 2/07/2005 is acknowledged.

Drawings

2. The drawings filed 7/07/2003 were initially accepted by the examiner. However, closer review of the drawings reveals that each of the Figures include lead lines and lines connoting structure that are of poor line quality. Accordingly, new corrected drawings in compliance with 37 CFR 1.121(d) are required in this application. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either

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“Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites that the grill includes a “rotatable member.” It is not clear what structure in applicant’s Figures corresponds to this “rotatable member.” It appears that this recitation is referring to the grill member (22) illustrated in applicant’s Figures 1 and 3. However, claim 1 already introduces a grill member in line 1 of the claim. As best can be determined, and for the purpose of an examination on the merits, it appears applicant intended to recite in claim 1 that the grill member is rotatable and not introduce an additional “rotatable member.” Correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 3, 5, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,979,490 to Nudo et al. ("Nudo").

Nudo discloses in Figures 1-12 an collapsible grill and stand substantially as described in applicant's claims 1, 2, 3, 5, 7, and 9. In particular, Nudo shows a grill assembly and stand (see Figs. 2 and 11) that includes a grill member (7) with a central hub (32) that is connected to an upwardly projecting pivot post (9) that is connected to an elongated arm (5). As shown in Figure 7A, the grill member (7) is separable from the stand. Further, as the purpose of the assembly in Njudo is to create an adjustable, east to erect and easy to carry campfire grill (see col. 1, lines 20-24) a person of ordinary skill in the art would reasonably consider the grill member to be manually liftable from the stand. Arm (5) is connected to a telescoping post (1) (see col. 1, lines 26-35 and col. 2, lines 54-59). Further, the embodiment of the grill and stand shown in Figure 11 includes this same telescoping assembly in conjunction with a stand that includes laterally extending support members (spokes of stand 25) that has downwardly facing lower surfaces for support.

In regard to the limitation of claims 1 and 9 that the grill member is rotatable or fully rotatable, this limitation is considered met by the grill member (7) of Nudo. While Nudo discloses that the assembly includes an anti-rotating clip (31) (see col. 3; lines 43-44), without the clip attached rotation of grill member would not be constrained and would therefore be rotatable. Further, it has been held that omission of an element and its function is obvious if the

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function of the element is not desired. See MPEP § 2144.04(II)(A). Accordingly, if rotation of the grill member were desired, elimination of the anti-rotating clip would be obvious to a person of ordinary skill in the art.

In regard to claim 7, Nudo discloses a collapsible grill and stand that is portable, lightweight, and intended to be easy to assemble (see col. 1, lines 20-24). The selection of particular disassembled dimensions would be dependent upon such factors as the size of the grill and stand itself. To have selected the dimensions claimed by applicant would be simply an obvious matter of engineering design choice and is not given any patentable weight. Further, a person of ordinary skill in the art would reasonably select applicant's dimensions for the disassembled size of the grill and stand of Nudo in order to render the apparatus portable.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nudo as applied to claim 2 above, in view of U.S. Patent NO. 4,117,825 to Robertson ("Robertson").

Nudo discloses all the limitations of claim 4 except that the support means includes two pivotally attached support members.

Robertson teaches a cooking stand that is considered to be in the same field of endeavor as Nudo. In Robertson, the stand includes pivotally attached support members (202) (see Figs. 4 and 5). As described in column 2, lines 15-18 these members (202) are described as "feet" that fold longitudinally relative to a support post. Accordingly, these pivotal feet (202) are considered to meet the limitations of applicant's claims of first and second pivotable members arranged for rotation about a longitudinal axis of an upright post.

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Therefore, in regard to claim 4, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the stand of Nudo to include pivoting support members as taught by Robertson for the desirable purpose of providing supports that can be pivoted to a stabilizing position when the stand is in use (see Robertson, col. 3, lines 22-28) and a compact position for transport (see Robertson, claims 1 and 2 and col. 2, lines 15-18).

Allowable Subject Matter

8. Claims 6 and 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments with respect to claims 1-5, 7, and 9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc
April 27, 2005


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749